

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

JOSE MANUEL ZELAYA BENAVIDES,

Petitioner,

v.

CIVIL ACTION NO. **3:09cv814**

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM OPINION

Petitioner, a federal prisoner incarcerated in Mississippi, was convicted in this Court and sentenced on September 5, 2007. On December 23, 2009, the Court received from Petitioner a petition for writ of habeas corpus under 28 U.S.C. § 2241. By Memorandum Order entered on October 29, 2010, the Court denied the petition for a writ of habeas corpus and informed Petitioner that because Petitioner seeks to challenge his conviction and sentence, he may only proceed under 28 U.S.C. § 2255.

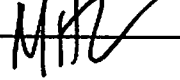
A motion pursuant to 28 U.S.C. § 2255 provides the primary means of collateral attack on the imposition of a federal conviction and sentence. *See Pack v. Yusuff*, 218 F.3d 448, 451 (5th Cir. 2000) (*quoting Cox v. Warden, Fed. Det. Ctr.*, 911 F.2d 1111, 1113 (5th Cir. 1990)).

Petitioner's current action may not proceed under 28 U.S.C. § 2241 unless he demonstrates that the remedy afforded by 28 U.S.C. § 2255 is inadequate or ineffective to test the legality of his detention. *See Swain v. Pressley*, 430 U.S. 372, 381 (1977); *In re Vial*, 115 F.3d 1192, 1194 (4th Cir. 1997). A petition pursuant to 28 U.S.C. § 2241 "can only be filed in the district in which a prisoner is confined." *United States v. Poole*, 531 F.3d 263, 264 (4th Cir. 2008). To the extent

that Petitioner wishes to proceed under Section 2241, he must file his petition in the district where he is currently incarcerated.

The Court provided Petitioner with the forms for filing a motion under 28 U.S.C. § 2255. The Court instructed him to return the forms within eleven (11) days from the date of entry of the previous Memorandum Order if he wished to pursue his claims in this Court. The Court warned Petitioner that failure to abide by the deadline would result in dismissal of the action. More than eleven (11) days have passed and Petitioner has not responded. Accordingly, the action will be DISMISSED.

An appropriate Order will accompany this Memorandum Opinion.

_____/s/ 
M. Hannah Lauck
United States Magistrate Judge

Date: *12-15-10*
Richmond, Virginia